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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,106	02/03/2005	Hiroshi Dairiki	46242	7579

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MANELLI DENISON & SELTER
2000 M STREET NW SUITE 700
WASHINGTON, DC 20036-3307

EXAMINER

SULLIVAN, DANIELLE D

ART UNIT	PAPER NUMBER
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1616

MAIL DATE	DELIVERY MODE
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01/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/523,106	Applicant(s) DAIRIKI ET AL.	
	Examiner Danielle Sullivan	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/30/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification only discloses one working example of a sulfate or phosphate salt of a polyoxyalkylene arylphenyl ether, namely polyoxyethylene tristyrylphenyl ether sulfate ammonium salt (page 13, lines 15; page 14, lines 1, 9 and 17; page 15, lines 6, 15 and 22; page 16, lines 3 and 22). Therefore, the claims fail to comply with the written description requirement. The specification fails to show that applicant was in possession of any and all sulfate or phosphate salts of a polyoxyalkylene arylphenyl ether for use within the disclosed invention. Therefore, claims 1-5 are rejected as lacking written description.

Response to Amendment

Applicant has amended around the 35 USC 112, 1st paragraph rejection of claims 1-5 by including a specific polyoxyalkylene arylphenyl ether, the sulfate or phosphate salt of polyoxyethylene tristyrylphenyl ether.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suwa et al. (JP 05-043402) in view of Suzuki et al. (US 5,980,926) and in further view of Deming et al (US 5,354,742).

Applicant's Invention

Applicant claims a granulated pesticidal composition comprising an active ingredient, a lignosulfonate surfactant with a degree of sulfonation of at least 2.0, and a sulfate of phosphate salt of a polyoxyalkylene arylphenyl ether.

Determination of the scope and the content of the prior art

(MPEP 2141.01)

With respect to claims 1-5 of the instant application, Suwa et al. teaches a water dispersible granular composition containing 1-90wt% of an agriculturally active component, 5-30wt% of a surfactant A and 1-10wt% of a surfactant B. Surfactant A may comprise ligninsulfonate and surfactant B may comprise the polyoxyalkylene arylphenyl ether sulfuric acid ester, polyoxyethylene styrylphenyl ether sulfuric acid ester (abstract).

Suwa et al. does not teach the use of a ligninsulfonate surfactant having a degree of sulfonation of at least 2 nor the specific pesticides cyflufenamid, triflumizole or a combination of the two pesticides.

With respect to claims 1-5, Suzuki et al. discloses a water dispersible granule suitable for preparing the formulations of pesticides (column 2, lines 10-16). The pesticidal component may be triflumizole (column 2, lines 45-47), cyflufenamid (structure of formula [1], column 3, Table 1, No. 1) or a combination of the two (column 2, line 39-column 4, line 25). Additionally, the granule is combined at the wet milling process with tristyryl phenyl ether added thereon with polyoxyethylene (column 4, lines 26-34). Also, a dispersion aid, sodium ligninsulfonate was added at the time of wet milling (column 4, lines 35-41).

Deming et al. teaches the use of the surfactant Polyfon T a specific lignosulfonate surfactant as recited in claim 1(column 20, line 69).

Finding of prima facie obviousness

Rational and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Suwa et al., Suzuki et al. and Deming et al. to make a composition comprising a pesticidal active ingredient, a lignosulfonate surfactant with a degree of sulfonation of at least 2.0 and a sulfate or phosphate salt of a polyoxyalkylene arylphenyl ether. Since Suzuki et al. clearly teaches that the active ingredients (cyflufenamid and triflumizole) are both used in a water dispersible granule

and because Deming et al. also teaches that Polyfon T can be used in a water dispersible granule.

Since Suzuki et al., Suwa et al. and Deming et al. all teach that the respective components listed can be used in the art individually for the same purpose, as a water dispersable granule it would have been obvious to combine them into one formulation, since they are all used individually in the art for the same purpose.

One would have been motivated to use the ranges of claim 2, because it is routine optimization for one of ordinary skill in the art to adjust ingredients in a composition to optimize the desired results of the composition.

Response to Arguments

Applicant's arguments filed 11/30/2007 have been fully considered but they are not persuasive. Applicant argues that Suwa and Suzuki et al. fail to disclose the specific combination of lignosulfonate surfactant as surfactant A and polyoxyethylene tristyrylphenyl ether sulfate or phosphate as surfactant B. However, examples in Suzuki et al. teach the combination of the disclosed pesticidal ingredients, tristyryl phenyl ether with ethylene oxide and sodium ligninsulfonate. Example 1 discloses triflumizole and Example 4 discloses a formulation comprising compound 1 (Table 1) (cyflufenamid). Although, Suzuki is silent as to the sulfonation of sodium ligninsulfonate, it is clear from the teachings of Deming that Polyfon T is a sodium ligninsulfonate with degree of sulfonation of 2 that could have been used within the example. Further, it is would have

been obvious to use the specific salts of tristyrylphenyl ether, eg. sulfate or phosphate, in view of Suwa.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, there is reason to combine the sodium ligninsulfonate with the claimed degree of sulfonation with tristyrylphenyl ether and triflumizole or cyflufenamid, because one of ordinary skill in the art would have a reasonable expectation of success.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


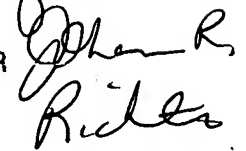
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Danielle Sullivan
Patent Examiner
Art Unit 1616


SHELLEY A. DOOSOL
PRIMARY EXAMINER


Johann R. Richter
Supervisory Patent Examiner
Technology Center 1600